

§ 1000.60

(1) That there are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under the Single Audit Act or in an independent financial audit prepared in accordance with generally accepted auditing principles; and

(2) That it is a self-governance Indian tribe or that it has the administrative capacity and controls to responsibly manage the investment. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 *et seq.*).

(c) Recipients shall invest IHBG funds only in:

(1) Obligations of the United States; obligations issued by Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) Accounts that are insured by an agency or instrumentality of the United States or fully collateralized to ensure protection of the funds, even in the event of bank failure.

(d) IHBG funds shall be held in one or more accounts separate from other funds of the recipient. Each of these accounts shall be subject to an agreement in a form prescribed by HUD sufficient to implement the regulations in this part and permit HUD to exercise its rights under § 1000.60.

(e) Expenditure of funds for affordable housing activities under section 204(a) of NAHASDA shall not be considered investment.

(f) A recipient may invest its IHBG annual grant in an amount equal to the annual formula grant amount less any formula grant amounts allocated for the operating subsidy element of the Formula Current Assisted Housing Stock (FCAS) component of the formula (see §§1000.316(a) and 1000.320) multiplied by the following percentages, as appropriate:

- (1) 50% in Fiscal Years 1998 and 1999;
- (2) 75% in Fiscal Year 2000; and

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(3) 100% in Fiscal Years 2001 and thereafter.

(g) Investments under this section may be for a period no longer than two years.

§ 1000.60 Can HUD prevent improper expenditure of funds already disbursed to a recipient?

Yes. In accordance with the standards and remedies contained in §1000.538 relating to substantial non-compliance, HUD will use its powers under a depository agreement and take such other actions as may be legally necessary to suspend funds disbursed to the recipient until the substantial non-compliance has been remedied. In taking this action, HUD shall comply with all appropriate procedures, appeals and hearing rights prescribed elsewhere in this part.

§ 1000.62 What is considered program income and what restrictions are there on its use?

(a) Program income is defined as any income that is realized from the disbursement of grant amounts. Program income does not include any amounts generated from the operation of 1937 Act units unless the units are assisted with grant amounts and the income is attributable to such assistance. Program income includes income from fees for services performed from the use of real or rental of real or personal property acquired with grant funds, from the sale of commodities or items developed, acquired, etc. with grant funds, and from payments of principal and interest earned on grant funds prior to disbursement.

(b) Any program income can be retained by a recipient provided it is used for affordable housing activities in accordance with section 202 of NAHASDA. If the amount of income received in a single year by a recipient and all its subrecipients, which would otherwise be considered program income, does not exceed \$25,000, such funds may be retained but will not be considered to be or treated as program income.

(c) If program income is realized from an eligible activity funded with both grant funds as well as other funds (i.e., funds that are not grant funds),

then the amount of program income realized will be based on a percentage calculation that represents the proportional share of funds provided for the activity generating the program income.

(d) Costs incident to the generation of program income shall be deducted from gross income to determine program income.

Subpart B—Affordable Housing Activities

§ 1000.101 What is affordable housing?

Eligible affordable housing is defined in section 4(2) of NAHASDA and is described in title II of NAHASDA.

§ 1000.102 What are eligible affordable housing activities?

Eligible affordable housing activities are those described in section 202 of NAHASDA.

§ 1000.104 What families are eligible for affordable housing activities?

The following families are eligible for affordable housing activities:

(a) Low income Indian families on a reservation or Indian area.

(b) A non-low income Indian family may receive housing assistance in accordance with § 1000.110, except that non low-income Indian families residing in housing assisted under the 1937 Act do not have to meet the requirements of § 1000.110 for continued occupancy.

(c) A non-Indian family may receive housing assistance on a reservation or Indian area if the non-Indian family's housing needs cannot be reasonably met without such assistance and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families, except that non-Indian families residing in housing assisted under the 1937 Act do not have to meet these requirements for continued occupancy.

§ 1000.106 What families receiving assistance under title II of NAHASDA require HUD approval?

(a) Housing assistance for non low-income Indian families requires HUD ap-

proval only as required in §§ 1000.108 and 1000.110.

(b) Assistance under section 201(b)(3) of NAHASDA for non-Indian families does not require HUD approval but only requires that the recipient determine that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families and the non-Indian family's housing needs cannot be reasonably met without such assistance.

§ 1000.108 How is HUD approval obtained by a recipient for housing for non low-income Indian families and model activities?

Recipients are required to submit proposals to operate model housing activities as defined in section 202(6) of NAHASDA and to provide assistance to non low-income Indian families in accordance with section 201(b)(2) of NAHASDA. Assistance to non low-income Indian families must be in accordance with § 1000.110. Proposals may be submitted in the recipient's IHP or at any time by amendment of the IHP, or by special request to HUD at any time. HUD may approve the remainder of an IHP notwithstanding disapproval of a model activity or assistance to non low-income Indian families.

§ 1000.110 Under what conditions may non low-income Indian families participate in the program?

(a) A family who is purchasing housing under a lease purchase agreement and who was low income at the time the lease was signed is eligible without further conditions.

(b) A recipient may provide the following types of assistance to non low-income Indian families under the conditions specified in paragraphs (c), (d) and (e) of this section:

(1) Homeownership activities under section 202(2) of NAHASDA, which may include assistance in conjunction with loan guarantees under the Section 184 program (see 24 CFR part 1005);

(2) Model activities under section 202(6) of NAHASDA; and

(3) Loan guarantee activities under title VI of NAHASDA.